

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-10064-JWB

JUAN CARLOS CARMONA,

Defendant.

**MEMORANDUM AND ORDER**

This matter is before the court on Defendant's "Motion to Dismiss Complaint/Filing." (Doc. 131.) In the motion, Defendant "seeks to dismiss his motion under 28 U.S.C. § 2255 without prejudice as he wishes to voluntarily withdraw his claim of ineffective assistance of counsel." (*Id.* at 1.) Defendant explains that he "received contradictory legal advice but has [been] persuaded that a § 2255 would be meritless due to previous rulings by this Court and the Tenth Circuit Court of Appeals." (*Id.*)

Defendant's motion to voluntarily dismiss (Doc. 131) is unopposed and is GRANTED. Defendant's previously-filed motion to vacate sentence under § 2255 motion (Doc. 125) is hereby DISMISSED. The court declines to characterize the dismissal as without prejudice, as any subsequently-filed § 2255 motion could be regarded as a second or subsequent motion under the standards explained in *United States v. Rejda*, 790 F. App'x 900, 904 (10th Cir. 2019) (finding voluntarily dismissed § 2255 motion counted as a first § 2255 motion where petitioner conceded that the motion lacked merit.) IT IS SO ORDERED this 29th day of October, 2020.

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s/ John W. Broomes  
JOHN W. BROOMES  
UNITED STATES DISTRICT JUDGE